

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 128: REGULATION OF TRANSIENT SALES

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Maine Revised Statutes
Title 32: PROFESSIONS AND OCCUPATIONS
Chapter 128: REGULATION OF TRANSIENT SALES

Subchapter 1: DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS

§14501. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 324, §3 (AMD).]

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of home repair services.

[1993, c. 444, §1 (NEW) .]

2. Department. "Department" means the Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation.

[1993, c. 444, §1 (NEW); 1995, c. 502, Pt. H, §48 (AMD); 2011, c. 286, Pt. B, §5 (REV) .]

3. Door-to-door sales. "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.

[1993, c. 444, §1 (NEW) .]

4. Employee. "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.

[1993, c. 444, §1 (NEW) .]

5. Home repair seller. "Home repair seller" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.

[1993, c. 444, §1 (NEW) .]

6. Home repair services. "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

[1993, c. 444, §1 (NEW) .]

7. Permanent place of business. "Permanent place of business" means a building or other permanent structure, including a home residence, that is owned or held under a 12-month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.

[1993, c. 444, §1 (NEW) .]

8. Residence. "Residence" means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.

[1993, c. 444, §1 (NEW) .]

9. Transient seller of home repair services. "Transient seller of home repair services," "transient seller" or "seller" means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 1995, c. 502, §H48 (AMD). 2001, c. 324, §3 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14502. EXEMPTIONS

1. New homes. This subchapter does not apply to the original construction of a single-family or multifamily residence.

[2001, c. 324, §4 (AMD) .]

2. Sales amount. This subchapter does not apply to home repair services for which the gross sales price, including any interest or carrying charges, is less than \$25.

[2001, c. 324, §4 (AMD) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §4 (AMD).

§14503. HOME REPAIR SERVICES CONTRACT

It is a violation of this subchapter if a contract for home repair services to be provided by a transient seller of home repair services fails to meet the written contract requirements, if applicable, of: [2001, c. 324, §5 (AMD) .]

1. Consumer solicitations or sales. The laws governing consumer solicitations or sales, sections 4661 to 4670;

[1993, c. 444, §1 (NEW) .]

2. Transient sales. The laws governing transient sales, sections 14701 to 14716;

[2001, c. 324, §6 (AMD) .]

3. Home solicitation sales. The laws governing home solicitation sales, Title 9-A, sections 3-501 to 3-507; and

[1993, c. 444, §1 (NEW) .]

4. Home construction contracts. The laws governing home construction contracts, Title 10, sections 1486 to 1490.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §§5,6 (AMD).

§14504. LICENSE REQUIRED

1. License required. A transient seller of home repair services must be licensed by the department and acquire a door-to-door sales license in the manner as set under section 14505 before engaging in the door-to-door sales of home repair services. The licensing requirement under this section is in addition to the licensing requirements applicable to the occupation, trade or profession for which a license is required. A transient seller who solicits sales during the course of a municipal or state repair contract is exempt from this requirement.

[2007, c. 402, Pt. KK, §1 (AMD) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Enforcement. This section is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §7 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R11 (RPR). 2007, c. 402, Pt. KK, §1 (AMD).

§14505. EVIDENCE OF LICENSURE

Upon licensure, the department shall issue to a transient seller of home repair services a door-to-door sales license that indicates that the person whose name appears on the license is a licensed transient seller of home repair services under this subchapter. The license must also include the name of the seller's company. [2007, c. 402, Pt. KK, §2 (AMD).]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §7 (AMD). 2007, c. 402, Pt. KK, §2 (AMD).

§14506. DISCLOSURE OF LICENSE NUMBER

1. Disclosure required. A contract for door-to-door sales of home repair services by a transient seller of home repair services must include the seller's door-to-door sales license number in the following manner: State door-to-door sales license #: (fill in number).

[2007, c. 402, Pt. KK, §3 (AMD) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Enforcement. This section is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R12 (RPR). 2007, c. 402, Pt. KK, §3 (AMD).

§14507. APPLICATION

An application for licensure under this chapter must include: [2007, c. 402, Pt. KK, §4 (AMD) .]

1. Application information. The name, local and permanent business and residential address or addresses, date of birth and social security number of the home repair seller;

[1993, c. 444, §1 (NEW) .]

2. Employees of the seller. The names and addresses of employees of the seller, their dates of birth and social security numbers;

[1993, c. 444, §1 (NEW) .]

3. Statement. At the time of making the application, a statement of all civil judgments or criminal convictions secured or outstanding against the seller that arises out of home repair services during the 4 years prior to making the application, all criminal and civil suits pending against the seller that arise out of home repair services and all criminal convictions and criminal suits pending for theft against the seller.

The seller shall promptly notify the department of all changes or additions in the information required by this section.

Knowingly, intentionally or recklessly making a false statement in an application is grounds for denial of the application or revocation of the license; and

[2007, c. 402, Pt. KK, §4 (AMD) .]

4. Photograph. A recent photograph of the home repair seller.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2007, c. 402, Pt. KK, §4 (AMD).

§14508. RENEWAL APPLICATION

An annual renewal application must be filed by the seller on October 31st or at such other times as the department designates. The renewal application must include changes or additions to the information required by section 14507. The renewal application must be accompanied by the renewal fee as set under section 14509. [2007, c. 402, Pt. KK, §5 (AMD).]

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §8 (AMD). 2007, c. 402, Pt. KK, §5 (AMD).

§14509. LICENSE FEE

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$300 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. KK, §6 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

1. Transient seller registration.

[1999, c. 685, §25 (RP) .]

2. Renewal.

[1999, c. 685, §25 (RP) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 1999, c. 685, §25 (AMD). 2001, c. 324, §9 (AMD). 2007, c. 402, Pt. KK, §6 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14510. SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY

1993, c. 444, §1 (NEW). 2013, c. 217, Pt. K, §12 (RP).

§14511. FORMS AND MODEL CONTRACT

(REPEALED)

SECTION HISTORY

1993, c. 444, §1 (NEW). 2001, c. 324, §10 (AMD). 2007, c. 402, Pt. KK, §7 (RP).

§14512. PENALTIES

The penalties in this section are in addition to penalties provided for specific violations within this subchapter. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

1. Criminal penalty.

[2003, c. 452, Pt. R, §13 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Civil penalty. The following penalties apply to violations of this subchapter.

A. A transient seller of home repair services or the seller's employee who violates this subchapter commits a civil violation for which a fine of up to \$2,000 may be adjudged. This penalty may be assessed against each seller and each employee. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A transient seller of home repair services or the seller's employee who violates this subchapter after having previously violated this subchapter 2 or more times commits a civil violation for which a fine of not more than \$5,000 may be adjudged. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A transient seller of home repair services or the seller's employee who violates this subchapter in a way that injures a consumer who is more than 60 years of age commits a civil violation for which a fine of up to \$5,000 may be adjudged. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

This subsection is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Unfair trade practice. A transient seller of home repair services who fails to obtain a license in violation of this subchapter commits an unfair trade practice in violation of Title 5, section 207.

[2007, c. 402, Pt. KK, §8 (AMD) .]

4. Revocation. In any action under this section the court may also revoke the seller's license to engage in the door-to-door sale of home repair services.

[2007, c. 402, Pt. KK, §9 (AMD) .]

SECTION HISTORY

1993, c. 444, §1 (NEW). 1995, c. 681, §5 (AMD). 2001, c. 324, §11 (AMD). 2003, c. 452, §R13 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §§8, 9 (AMD).

§14513. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. KK, §10 (NEW).]

SECTION HISTORY

2007, c. 402, Pt. KK, §10 (NEW).

Subchapter 2: TRANSIENT SELLERS OF CONSUMER MERCHANDISE

§14701. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 324, §12 (NEW) .]

1. Consumer. "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business.

[2001, c. 324, §12 (NEW) .]

2. Department. "Department" means the Department of Professional and Financial Regulation.

[2001, c. 324, §12 (NEW) .]

3. Employee. "Employee" means any independent contractor, agent or person working for a salary or commission.

[2001, c. 324, §12 (NEW) .]

4. Merchandise. "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical or vocational schools located outside of the State that are registered pursuant to Title 20-A, section 9501. "Merchandise" does not include securities that are registered or exempt from registration pursuant to chapter 135, the Maine Uniform Securities Act and rules adopted pursuant to that Act or insurance products that are regulated under Title 24-A.

[2005, c. 347, Pt. E, §1 (AMD) .]

5. Permanent place of business. "Permanent place of business" means any building or other permanently affixed structure, including a home residence, that is owned or held under a 12-month lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

[2001, c. 324, §12 (NEW) .]

6. Person. "Person" includes natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entities.

[2001, c. 324, §12 (NEW) .]

7. Sale. "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell or attempt to sell, or advertisement for sale, of any merchandise for cash or for credit.

[2001, c. 324, §12 (NEW) .]

8. Transient seller of consumer merchandise or transient seller. "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient seller of consumer merchandise" does not include a person who sells at public fairs, expositions or bazaars or a member selling on behalf of public service organizations. "Transient seller of consumer merchandise" does not include a person who sells exclusively by mail contact, except for a person who offers merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who requires the recipient to pay something

of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2005, c. 65, §C19 (AMD). 2005, c. 347, §E1 (AMD).

§14702. LICENSURE

1. License required. A person who engages in the business of a transient seller of consumer merchandise, including a self-employed person or a person who employs one or more transient sellers of consumer merchandise, must apply to the department and acquire a license in the manner set forth in section 14706 before engaging in sales of consumer merchandise in this State.

[2007, c. 402, Pt. KK, §11 (AMD) .]

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R14 (RPR). 2007, c. 402, Pt. KK, §11 (AMD).

§14703. LICENSES

1. Issuance. The department shall issue to each transient seller of consumer merchandise and employee of that transient seller a license that, among other things, must indicate that the person whose name appears on the license is a licensed seller or employee of a licensed seller under this subchapter.

[2007, c. 402, Pt. KK, §12 (AMD) .]

2. Possession and presentation. Every transient seller of consumer merchandise and each of the seller's employees must have a valid license, as required by this subchapter, in the seller's or employee's immediate possession at all times when engaging in sales of consumer merchandise in this State and shall present the license for inspection upon request of any person.

[2007, c. 402, Pt. KK, §12 (AMD) .]

3. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 2 commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates subsection 2 commits a Class D crime. [2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2003, c. 452, §R15 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §12 (AMD).

§14704. DISCLOSURE OF LICENSE NUMBER AND PERMANENT PLACE OF BUSINESS

1. License number and permanent place of business disclosed in advertisements. Every time a transient seller of consumer merchandise advertises in this State for the sale of merchandise, whether in print or electronic media, the advertisement must disclose the transient seller's license number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's License Number: (Fill in number)" and must disclose the address of the seller's permanent place of business.

[2007, c. 402, Pt. KK, §13 (AMD) .]

2. License number and place of business disclosed in written receipt. Every time a transient seller of consumer merchandise sells merchandise to a consumer in this State, the transient seller shall provide the purchaser with a written receipt, at the time of sale, disclosing the transient seller's license number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's License Number: (Fill in number)" and disclosing the transient seller's name and permanent place of business.

[2007, c. 402, Pt. KK, §13 (AMD) .]

3. Penalty. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2003, c. 452, §R16 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §13 (AMD).

§14705. LOCAL REGISTRATION

Nothing in this subchapter affects the right of any town or municipality to make such regulations relative to transient sellers of consumer merchandise as may be permissible under the general law or under any municipal charter. [2001, c. 324, §12 (NEW).]

SECTION HISTORY

2001, c. 324, §12 (NEW).

§14706. APPLICATION

Each application for a transient seller of consumer merchandise license required by section 14702 must include: [2007, c. 402, Pt. KK, §14 (AMD).]

1. Name and address. The name and local and permanent business address of the applicant;

[2001, c. 324, §12 (NEW) .]

2. Employees of applicant. Names of all employees of the applicant employed in this State;

[2001, c. 324, §12 (NEW) .]

3. Statement. A statement of all judgments secured or outstanding against the applicant arising out of sales to consumers during the 2 years immediately prior to making the application and of all suits of either a criminal or civil nature pending against the applicant that arise out of sales to consumers, at the time of making the application;

[2001, c. 324, §12 (NEW) .]

4. Statement of yearly gross revenues. A statement of anticipated yearly gross revenues from sales of consumer merchandise in this State;

[2001, c. 324, §12 (NEW) .]

5. Security deposits. The name and address of the person to whom security deposits made with the department pursuant to this subchapter are returned; and

[2001, c. 324, §12 (NEW) .]

6. Seller's certificate. The number of a valid registration certificate issued to the applicant by the State Tax Assessor pursuant to Title 36, chapter 211 or satisfactory evidence that the applicant is not required to be registered under that chapter.

[2011, c. 548, §9 (AMD) .]

The applicant shall promptly notify the department of all changes or additions in the information required in this section upon a form prescribed by the department. [2001, c. 324, §12 (NEW).]

Any false statement in an application, either original or supplementary, for a license subjects the applicant to the same penalty as if the applicant had no license. [2007, c. 402, Pt. KK, §15 (AMD) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §§14, 15 (AMD). 2011, c. 548, §9 (AMD).

§14707. RENEWAL APPLICATION

A renewal application made under this subchapter must be filed by the applicant on April 30th annually or at such other times as the Commissioner of Professional and Financial Regulation may designate. The renewal application must include all changes or additions in the information required by section 14706. The renewal application must be accompanied by the renewal fee as set under section 14708. [2007, c. 402, Pt. KK, §16 (AMD).]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §16 (AMD).

§14708. LICENSE FEE AND SECURITY DEPOSIT

1. Fees. The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$300. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. KK, §17 (AMD); 2011, c. 286, Pt. B, §5 (REV) .]

2. Dedicated revenues.

[2007, c. 402, Pt. KK, §17 (RP) .]

3. Security deposit. Every person that engages in the business of transient sellers of consumer merchandise, including the self-employed or those who employ one or more transient sellers of consumer merchandise, shall also make a security deposit of \$10,000 or of a sum equal to the anticipated yearly gross revenues in this State, whichever is less, with the department for the protection of consumers as described in section 14712. The security deposit may be made by a bond as drawn by the department and as secured by a surety approved by the department. Only one security deposit is required of each person engaged in transient sales of consumer merchandise.

[2001, c. 324, §12 (NEW) .]

4. License issued. The department shall issue to a transient seller of consumer merchandise and to employees of that transient seller a license upon receipt of a completed application with the fees as set under subsection 1 and the security deposit required by subsection 3.

[2007, c. 402, Pt. KK, §17 (AMD) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §17 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14709. WAIVER OF SECURITY DEPOSIT

Transient sellers of consumer merchandise may apply to the department for waiver of the security deposit required by section 14708 by presenting to the authorized person within the department the following information in addition to the information required under section 14706: [2001, c. 324, §12 (NEW) .]

1. Consumer sales. A sworn statement by the applicant that the applicant has continuously engaged in consumer sales in this State for a period not less than 3 years;

[2001, c. 324, §12 (NEW) .]

2. Theft offenses; fraudulent or deceptive business practice. A sworn statement by the applicant that neither the applicant nor any employee of the applicant operating in this State has been convicted of any theft offense or fraudulent or deceptive business practice in any United States' jurisdiction;

[2001, c. 324, §12 (NEW) .]

3. Complaints on file against applicant. A letter from the Attorney General's office in the state where the applicant has its principal place of business stating the nature or absence thereof of complaints on file against the applicant; and

[2001, c. 324, §12 (NEW) .]

4. Letter of recommendation. A letter of recommendation from an appropriate trade association that promotes sound and ethical trade practices and the processing of consumer complaints that states the applicant is a member in good standing of that association.

[2001, c. 324, §12 (NEW) .]

The authorized person within the department shall forward the completed application for waiver of the security deposit to the Office of the Attorney General for review and shall within 15 days of receipt of the completed application and with the advice of the Attorney General grant or deny the application for waiver.

[2001, c. 324, §12 (NEW).]

SECTION HISTORY

2001, c. 324, §12 (NEW).

§14710. REVOCATION OF RIGHT TO WAIVE SECURITY DEPOSIT

The authorized person within the department shall rescind the right of a transient seller of consumer merchandise to waive a security deposit upon occurrence of any of the following: [2001, c. 324, §12 (NEW) .]

1. Conviction for theft or fraudulent business practices. The transient seller of consumer merchandise or any employee is convicted of a theft offense or fraudulent or deceptive business practice;

[2001, c. 324, §12 (NEW) .]

2. Failure to defend action under Title 5, chapter 10. The transient seller of consumer merchandise or any employee fails to successfully defend any action brought against it under Title 5, chapter 10; or

[2001, c. 324, §12 (NEW) .]

3. Failure to negotiate consumer complaints. The transient seller of consumer merchandise or any employee fails to negotiate consumer complaints filed against it with the Attorney General.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY

2001, c. 324, §12 (NEW).

§14711. EXPIRATION

1. Licenses. Licenses issued under section 14703 expire:

A. On the date that the licensee establishes a permanent place of business and surrenders the licensee's license to the department; [2007, c. 402, Pt. KK, §18 (AMD) .]

B. When the licensee fails to file a renewal application as required by section 14707; or [2007, c. 402, Pt. KK, §18 (AMD) .]

C. Upon the surrender of the license for cancellation. [2007, c. 402, Pt. KK, §18 (AMD).]

[2007, c. 402, Pt. KK, §18 (AMD).]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §18 (AMD).

§14712. SECURITY DEPOSIT SUBJECT TO CLAIMS; ORDER OF PREFERENCE; RETURN OF SECURITY DEPOSIT

Each security deposit made under section 14708 is subject, as long as it remains in the hands of the department, to the attachment and execution in behalf of consumers whose claims arise in connection with the transient sale of consumer merchandise in this State. The department may be impleaded as a trustee in any civil action brought against any licensee and shall pay over, under order of court, such sum of money as the department may be found chargeable. The security deposit is subject to the payment of any fines and penalties incurred by the licensee through any of the provisions of this subchapter, and the clerk of the court in which that fine or penalty is imposed shall notify the department of the name of the licensee against whom that fine or penalty is adjudged and of the amount of that fine or penalty. The department, if it has in its possession a sufficient sum deposited by that licensee, shall pay the sum so specified to the clerk. If the department does not have a sufficient sum so deposited, it shall make payment of as much as it has in its possession. All claims upon the deposit must be satisfied after judgment, fine and penalty, in the order in which the order of court is entered in the respective suits, until all claims are satisfied or the security deposit is exhausted. A security deposit may not be paid over by the department to a licensee as long as there are any outstanding claims or notices of claims that are subject of suit against the licensee, in which case the department shall retain only such sum of the security deposit as is subject of claim. [2007, c. 402, Pt. KK, §19 (AMD).]

The security deposit required under section 14708 must be returned to the person so designated pursuant to section 14706, subsection 5 in the licensee's application for licensure made under section 14702 12 months following the expiration of the license. [2007, c. 402, Pt. KK, §19 (AMD).]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §19 (AMD).

§14713. VIOLATIONS; UNFAIR TRADE PRACTICE

1. Criminal penalty.

[2003, c. 452, Pt. R, §17 (RP); 2003, c. 452, Pt. X, §2 (AFF).]

2. Unfair trade practice. A person who fails to comply with this subchapter commits a violation of Title 5, chapter 10.

[2001, c. 324, §12 (NEW).]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2003, c. 452, §17 (AMD). 2003, c. 452, §2 (AFF).

§14714. SERVICE OF PROCESS (REPEALED)

SECTION HISTORY

2001, c. 324, §12 (NEW). 2013, c. 217, Pt. K, §13 (RP).

§14715. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the department may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. KK, §20 (NEW) .]

1. Misrepresentations. Misrepresentation of any material fact relating to the terms or conditions of sale;

[2007, c. 402, Pt. KK, §20 (RPR) .]

2. False impressions. Creation of an impression that is false or that the transient seller of consumer merchandise does not believe to be true; or

[2007, c. 402, Pt. KK, §20 (RPR) .]

3. False promises. Promising of performance that the transient seller of consumer merchandise does not intend to perform or believes will not be performed.

[2007, c. 402, Pt. KK, §20 (RPR) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §20 (RPR).

§14716. TELEMARKETERS

1. Incorporation of federal standards. Violation of any provision of the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Part 310, as in effect on January 1, 2000, by a transient seller of consumer merchandise is a violation of this subchapter.

[2001, c. 324, §12 (NEW) .]

2. Additional prohibitions. A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, and who initiates telephone contact with a consumer may not procure the services of any professional delivery courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected.

[2001, c. 324, §12 (NEW) .]

3. Do-not-call list.

[2007, c. 227, §3 (RP) .]

4. Other applicable law. A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, is subject to and shall comply with the provisions of chapter 69, subchapter V.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 227, §3 (AMD).

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